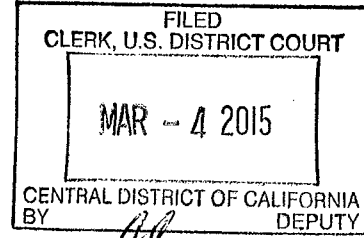


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7



8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 NFC Collections, LLC,  
12 Plaintiff,  
13 v.  
14 Helsing Releasing, LLC, Helsing  
15 Production Inc., Insight Film Studios,  
Ltd., Kirk Shaw, and Bank Leumi USA,  
16 Defendants.  
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CASE NO.: CV13-07264-MAN

**BANK LEUMI'S ~~PROPOSED~~  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON  
DENIAL OF PLAINTIFF NFC  
COLLECTION LLC'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT**

Judge: Hon. Manuel L. Real  
Place: Courtroom 8

Hearing Date: January 5, 2015  
Trial Date: March 17, 2015

The Court, the Honorably Manuel L. Real presiding, having considered Plaintiff NFC Collections LLC's ("Plaintiff" or "NFC") Notice of Motion for Partial Summary Judgment, and supporting papers and oral argument, and Defendant Bank Leumi USA's ("Defendant" or "Bank Leumi") opposing papers and oral argument, and having fully considered the law and the facts, hereby makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Section 4(d) of an Intercreditor and Subordination Agreement (the "Intercreditor Agreement") between Bank Leumi and Plaintiff's predecessor, Newbridge Film Capital LLC ("Newbridge") states, verbatim:

Notwithstanding anything to the contrary set forth herein, the parties acknowledge that the required *deposits* in respect of the distribution agreements for the territories of CIS, Scandinavia and Portugal have not yet been paid. Due to the foregoing, Newbridge shall not agree that such distribution agreements are "Acceptable Distribution Agreements" (as such term is defined in the Leumi Loan Agreement) *until such time, if ever, as the applicable distributors advance the required deposits* to the Collection Account. In the event that any such distributor fails to pay the respective deposit thereunder, and no equivalent "Acceptable Distribution Agreement" approved by Newbridge and Leumi as a replacement sale for such territory has been made, the Newbridge Obligations shall be senior in right of payment to a portion of the Leumi Obligations in an amount equal to the amount of the Borrowing Base that Leumi has attributed to such distribution agreement (i.e., \$311,868 in the case of CIS, \$241,110 in the case of Scandinavia, and \$91,980 in the case of Portugal; and, such amount, the "Leumi Subordinated Amount"), provided that all Leumi Obligations except for the Leumi Subordinated Amount shall have been repaid in full before the Newbridge Obligations shall be paid as set forth herein. (Emphasis added.)

2. This Section 4(d) recognizes that the deposits for a motion picture due from the distributors for CIS (Russia) and Portugal [and Scandinavia] "had not yet been paid," although past due and owing and not in compliance with the terms for an "Acceptable Distribution Agreement" under the Bank Leumi Loan definition of "Acceptable Distribution Agreement."

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1           3. Subordination of Bank Leumi to Plaintiff's predecessor, Newbridge, is  
2 tied only to payment of the deposit value by the distributors for the territories of  
3 each of CIS and Portugal.

4           4. Distribution agreements for CIS and Portugal require payment of 20  
5 percent of a minimum guarantee, as a deposit value.

6           5. Nowhere in Section 4(d) of the Intercreditor Agreement is  
7 subordination tied to full payment of the minimum guarantee payment for CIS or  
8 Portugal.

9           6. It is undisputed that at the time Newbridge and Bank Leumi entered  
10 into the Intercreditor Agreement, the distributors for CIS and Portugal had not yet  
11 made the required pre-delivery deposits, but they ultimately did pay the required  
12 deposit values in late 2009 and early 2010.

13           7. Specifically, the distributor for CIS paid \$48,500 on August 20, 2009;  
14 \$20,000 on December 3, 2009; and \$156,500 on March 2, 2010, totaling \$225,000,  
15 which was more than the required deposit value of 20 percent.

16           8. The distributor for Portugal paid \$10,000 on September 29, 2009 and  
17 \$25,000 on January 13, 2010, totaling \$35,000, which also exceeds the required  
18 deposit value of 20 percent for that territory.

19           9. It is a reasonable interpretation of the express terms of the  
20 Intercreditor Agreement that Section 4(d) requires only payment of the required  
21 deposits and requires payment prior to delivery to the distributors.


22           10. Moreover, the pre-delivery deposit referred to in Section 4(d) of the  
23 Intercreditor Agreement means sums payable by a distributor under the terms of its  
24 applicable distribution agreement, prior to delivery of motion picture materials to  
25 that particular distributor.

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1 16. It is a reasonable interpretation of the express terms of the Intercreditor  
2 Agreement that Section 4(d) requires only payment of the required deposits and  
3 requires payment prior to delivery to the distributors. Therefore, there are  
4 triable issues of material fact and summary judgment is not proper here.  
5 IT IS SO ORDERED.

6  
7 Dated: March 4, 2015

  
Judge Manuel L. Real  
United States District Court Judge

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